

No. 48948-1-II

---

**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO**

---

STATE OF WASHINGTON

Respondent,

v.

A.B.,

Appellant.

---

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON AND TEAM CHILD**

---

Vanessa Torres Hernandez,  
WSBA #42770  
Emily Chiang, WSBA #50517  
ACLU OF WASHINGTON  
FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184  
vhernandez@aclu-wa.org  
echiang@aclu-wa.org

Sara Zier, WSBA #43075  
Bonnie Linville, WSBA # 49361  
TEAM CHILD  
1225 S. Weller Street, # 420  
Seattle, WA 98144  
(206) 322-2444  
sara.zier@teamchild.org  
bonnie.linville@teamchild.org

*Attorneys for Amici Curiae*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	1
II. ISSUES TO BE ADDRESSED BY <i>AMICI</i> .....	2
III. STATEMENT OF THE CASE.....	2
IV. ARGUMENT .....	4
A. The State Has Already Elected to Modify A.B.’s Community Supervision due to his Possession of Marijuana, which Cannot Be Separated from his Suspension .....	5
1. The district specified that A.B.’s suspension was based on possession of marijuana. ....	6
2. Students who are suspended are legally prohibited from attending school. ....	7
B. Interpreting RCW 13.40.070 to Permit Stacking Punishment due to Suspension would Exacerbate the School to Prison Pipeline and Undermine Rehabilitation .....	9
1. Excluding students from school and punishing them through the justice system leads to lifelong negative consequences.....	9
2. Children of color, children with disabilities, and low-income children are disproportionately impacted by the school to prison pipeline.....	11
3. Stacking punishment is ineffective and undermines the rehabilitative aims of the juvenile justice system. ....	14
V. CONCLUSION.....	16

## TABLE OF AUTHORITIES

### State Cases

<i>McCleary v. State</i> , 173 Wn.2d 477, 269 P.3d 227 (2012).....	6
<i>State v. Murrin</i> , 85 Wn. App. 754, 934 P.2d 708 (1997) .....	4
<i>State v. S.J.C.</i> , 183 Wn.2d 408, 352 P.3d 749 (2015).....	14
<i>State v. Tran</i> , 117 Wn. App. 126, 69 P.3d 884 (2003) .....	4

### Federal Cases

<i>Goss v. Lopez</i> , 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).....	6, 7
<i>Plyler v. Doe</i> , 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).....	6

### Constitutional Provisions

Wash. Const. art. I § 9.....	6
------------------------------	---

### Statutes

RCW 13.40.070 .....	passim
RCW 28A.225.090.....	8
RCW 70.96A.096.....	15
RCW 9A.52.080.....	8

### Session Laws

Laws of 1977, ch. 291.....	14
----------------------------	----

## Regulations

WAC 392-400-205.....	8
WAC 392-400-260.....	7
WAC 392-400-265.....	7
WAC 392-400-270.....	7
WAC 392-400-325.....	8

## Other Authorities

Barry Holman & Jason Ziedenberg, <i>The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities</i> , Justice Policy Institute (2011) .....	15
Claudio Sanches & Linda Wertheimer, <i>School Dropout Rates Add to Fiscal Burden</i> , National Public Radio (July 24, 2011) .....	11
Emily Morgan, et.al., <i>The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and out of the Juvenile Justice System</i> , Council of State Governments (2014) .....	10, 11
Gary Sweeten, <i>Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement</i> , 23 Justice Quarterly 462 (2006).....	10
John Bridgeland, et. al, <i>The Silent Epidemic: Perspectives of High School Dropouts</i> , The Bill & Melinda Gates Foundation (Mar. 2006) .....	10
Maria Flores & Kathleen Callahan, EOGOAC, <i>Closing the Opportunity Gap in Washington's Public Education System</i> (2017).....	12
Office of Superintendent of Public Instruction, <i>Performance Indicators – Data and Analytics: Discipline</i> .....	12

Russel W. Ramberger & Daniel J. Losen, <i>The High Cost of Harsh Discipline and its Disparate Impact</i> , Center For Civil Rights Remedies (June 2016).....	11
Sequim School District No. 323, <i>Student Conduct Expectations and Reasonable Sanctions Procedure for Board Policy # 3240</i> (July 2016) .....	8
The Advancement Project, et al., <i>Federal Policy, ESEA Reauthorization, and the School-to-Prison Pipeline</i> (Mar. 2011).....	9
U.S. Department of Education, <i>Dear Colleague Letter on Educational Needs of Students with Disabilities in Correctional Facilities</i> (Dec. 5, 2014) .....	13
U.S. Department of Justice & U.S. Department of Education, <i>Dear Colleague Letter: Non-Discriminatory Administration of School Discipline</i> (Jan. 8, 2014) .....	10
Washington Department of Health, <i>Adolescent Needs Assessment Report</i> (Jan. 2010) .....	13
Washington Department of Social and Health Services, <i>Washington State Juvenile Justice Annual Report</i> (2014).....	13
Washington State Institute for Public Policy, <i>Inventory of Evidence-Based, Research-Based and Promising Practices: for Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and Mental Health Systems</i> (June 2016).....	15

## **I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonpartisan, nonprofit organization of over 50,000 members dedicated to the preservation and promotion of civil liberties. The ACLU has, as counsel to plaintiffs and as *amicus*, worked both to advance the constitutional right to education and to combat the school to prison pipeline. The ACLU has also submitted numerous *amicus* briefs to this Court and others advocating that juvenile criminal statutes be interpreted consistent with the constitutional premise that youth matters in determining culpability and punishment.

Team Child is a nationally recognized, non-profit civil legal advocacy program for low-income children at risk of involvement or already involved with juvenile and adult courts in Washington. With offices in King, Yakima, Pierce, and Spokane counties, Team Child lawyers advocate for low-income youth across the state to help them access their basic civil rights to education, health care, safe and stable housing, and other social services. Team Child has participated as *amicus* in many cases involving the legal rights and civil liberties of youth and children in Washington State and nationally.

## **II. ISSUES TO BE ADDRESSED BY *AMICI***

Whether A.B.'s charge for possession of marijuana should be dismissed because it rests on an erroneous interpretation of RCW 13.40.070 that exacerbates the school to prison pipeline and undermines the rehabilitative purpose of the statute.

## **III. STATEMENT OF THE CASE**

On October 8, 2015, approximately one month after the start of school, the principal of Sequim High School searched A.B.'s backpack based on a report of drug activity. CP 79-80 (Mot. for Determination of Probable Cause & Attached Cert. of Probable Cause). The principal then contacted the Sequim Police Department and an officer from that department questioned A.B. *Id.* The officer then filed a police report alleging that A.B. unlawfully possessed marijuana, and referred the case for prosecution.

As a result of this single incident, A.B. ultimately faced three state-imposed consequences. First, the school suspended A.B. on October 8th, issuing a 20-day (long-term) suspension. CP 38, 55; Br. of App., App'x B. The basis of the suspension was "alleged misconduct: . . . possession of marijuana, a vaporizer and vapes." CP 29, 55; Br. of App., App'x B.

Second, because A.B. was on community supervision with the juvenile court based on an earlier offense, the State sought and obtained a modification of A.B.'s community supervision. Br. of App., App'x C, App'x D. As punishment for the violation, the court ordered A.B. to serve four days in juvenile detention. Br. of App., App'x E.

Third, almost one month later, the State filed an information on November 4, 2015, charging A.B. with possession of marijuana on October 8, 2015. CP 77 (Criminal Information filed Nov. 4, 2015). Counsel for A.B. moved to dismiss the charges, arguing that the State had already elected to modify A.B.'s community supervision based on the October 8th incident, and that RCW 13.40.070 prohibited the State from subsequently filing new charges based on the same conduct. CP 60-72 (Mem. In Supp. of Mot. to Dismiss); CP 76 (Mar. 17, 2016 Mot. to Dismiss) . The trial court denied defense counsel's motion, reasoning that the modification of community supervision and new charge "rel[ied] on different allegations and different elements." Br. of App., App'x F at 6. Specifically, the trial court concluded that the modification of community supervision relied on A.B.'s suspension, which was separate from the conduct underlying the suspension. *Id.* at 4-6.



The court adjudicated A.B. guilty of possession of marijuana and sentenced him to six months of community supervision and sixteen hours of community restitution. CP 6-14 (Ord. on Adjudication and Disposition). This appeal followed.

#### **IV. ARGUMENT**

RCW 13.40.070(3) states that in juvenile court, “*in lieu of filing an information . . . a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision*” (emphasis added). Washington courts have repeatedly interpreted the statute to prohibit the State “from both seeking modification of community supervision and filing an information based on the same conduct.” *State v. Murrin*, 85 Wn. App. 754, 759, 934 P.2d 708 (1997); *State v. Tran*, 117 Wn. App. 126, 69 P.3d 884 (2003) (holding State cannot file both a motion to modify community supervision and an information based on the same unlicensed driving “incident”).

The State violated RCW 13.40.070(3) when it filed the charges in this case because it had already elected to modify A.B.’s community supervision due to his possession of marijuana. The State attempts to circumvent the requirements of RCW 13.40.070 by arguing that, although the charges in this case are based on possession of marijuana on October 8th, the modification of A.B.’s community supervision was based on the

fact that A.B. “missed school.” Br. of Resp. at 7. This argument has no basis in law or fact. A.B.’s suspension and his subsequent non-attendance at school cannot be severed from the conduct that gave rise to the suspension—possession of marijuana.

Interpreting RCW 13.40.070 to permit stacking punishment if a student has been suspended would exacerbate the school to prison pipeline and undermine the rehabilitative aims of the juvenile justice system. Such an interpretation could increase the likelihood of dropout and future involvement in the criminal justice system. It would increase criminal punishments for children simply because they faced school-based consequences and disproportionately impact children of color, low income children, and children with disabilities who are suspended at greater rates than their peers. The Court should reject this expansive interpretation of RCW 13.40.070.

**A. The State Has Already Elected to Modify A.B.’s Community Supervision due to his Possession of Marijuana, which Cannot Be Separated from his Suspension**

The State’s argument that the modification of community supervision was based on A.B.’s “non-attendance” is a legal fiction because the laws governing school suspension require that such discipline be linked to specific conduct—here, possession of marijuana, the same conduct underlying the charges in this case.

**1. The district specified that A.B.'s suspension was based on possession of marijuana.**

Education is of paramount constitutional importance. Wash. Const. art. I § 9; *McCleary v. State*, 173 Wn.2d 477, 485, 269 P.3d 227 (2012) (recognizing that the right of children to have the State make ample provision for their education is the paramount constitutional obligation of the State); *Plyler v. Doe*, 457 U.S. 202, 221-222, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) (recognizing that education is more than a governmental benefit and is the most important function of state and local governments).

Under the due process clauses to the federal constitution, the State may not arbitrarily withdraw the right to education. *Goss v. Lopez*, 419 U.S. 565, 574, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975). The right to education may not be denied based on student misconduct “absent fundamentally fair procedures to determine whether the misconduct occurred.” *Id.* at 576. At a minimum, the school must provide the student with notice of the specific conduct for which he or she is being excluded from school, and the opportunity to be heard. *Id.* at 581. Washington law incorporates these requirements: before being suspended, a student must be given specific notice of the alleged misconduct, including the evidence

supporting the allegation of misconduct. WAC 392-400-265; WAC 392-400-270. This enables the student to both challenge whether the violation occurred and whether the “nature and circumstances of the violation . . . reasonably warrant” a suspension. WAC 392-400-260.

In this case, Sequim School District provided notice that it was suspending A.B. based on its conclusion that he had possessed marijuana, a vaporizer, and vapes on October 8, 2015. The district had a legal obligation to provide such notice; failure to do so could lead to the suspension being overturned for violation of due process. WAC 392-400-265; *Goss*, 419 U.S. at 584. A.B.’s suspension simply cannot, as the State urges, be severed from his possession of marijuana.

**2. Students who are suspended are legally prohibited from attending school.**

The State’s argument that the modification of community supervision was based on A.B.’s “non-attendance” relies on a similar fiction. A.B. did not attend school because he was suspended from school— and thus legally prohibited from attending school—on the basis of the very same marijuana possession.

A suspension includes “a denial of attendance . . . for any single subject or class, or for any full schedule of subjects or classes” and may include “a denial of admission to, or entry upon, real and personal

property that is owned, leased, rented, or controlled by the school district.”

WAC 392-400-205. A.B.’s notice of long-term suspension specifically warns that “[a] student on out of school suspension is not allowed on any Sequim School District property or at any Sequim School District sponsored event or activity.” Br. of App., App’x B. Had A.B., notwithstanding his suspension, attempted to attend school, he could have faced additional sanctions for violating the school’s code of conduct<sup>1</sup> and potential criminal charges.<sup>2</sup>

Moreover, a student’s absence due to suspension is considered an excused absence, not a violation of compulsory attendance laws. WAC 392-400-325 (excluding absences due to suspension from the definition of unexcused absences); *see also* RCW 28A.225.090(1)(a) (directing judges setting attendance requirements for truant students to classify absence due to suspension as excused). A.B.’s non-attendance was solely due to his suspension, and the conduct underlying the suspension cannot be separated from his non-attendance.

---

<sup>1</sup> Sequim School District No. 323, *Student Conduct Expectations and Reasonable Sanctions Procedure for Board Policy # 3240*, 3-4 (July 2016), <http://sequimschools.wednet.edu/cms/lib6/WA01000561/Centricity/Domain/16/3240P%20%20Student%20Conduct%20Expectations%20and%20Reasonable%20Sanctions%202016.pdf> (classifying as disruptive conduct refusal to leave an area when directed to do so by school personnel).

<sup>2</sup> RCW 9A.52.080 makes it a crime to knowingly enter or remain unlawfully in or upon the premises of another.

**B. Interpreting RCW 13.40.070 to Permit Stacking Punishment due to Suspension would Exacerbate the School to Prison Pipeline and Undermine Rehabilitation**

The State advocates an interpretation of RCW 13.40.070(3) that would funnel children out of the school system and into the criminal justice system, exacerbating what is known as the “school to prison pipeline.” In essence, the State argues that so long as a student is suspended due to misconduct, it may circumvent RCW 13.40.070(3)’s prohibition on stacking punishment for a single instance of misconduct. In so doing, it seeks to convert suspension into a tool of criminal punishment. This Court should avoid interpreting RCW 13.40.070 to unnecessarily increase punishment and undermine the rehabilitative purposes of the juvenile justice system.

**1. Excluding students from school and punishing them through the justice system leads to lifelong negative consequences.**

The school to prison pipeline is a disturbing national trend where children are pushed out of school and into the criminal justice system; it is “the emphasis of punitive consequences, student exclusion, and justice-system intervention over students’ right to an education.”<sup>3</sup> The most direct manifestation of the school to prison pipeline occurs when, as here,

---

<sup>3</sup> The Advancement Project, et al., *Federal Policy, ESEA Reauthorization, and the School-to-Prison Pipeline*, 2 (Mar. 2011), [http://b3cdn.net/advancement/ceb35d4874b0ffdc10\\_ubm6bacap.pdf](http://b3cdn.net/advancement/ceb35d4874b0ffdc10_ubm6bacap.pdf).

school-based punitive consequences like suspension are coupled with criminal punishment.

There is broad national consensus that suspension and expulsion harm students.<sup>4</sup> Students who are out-of-school suspended and expelled are significantly less likely to graduate from high school.<sup>5</sup> Students who miss school due to suspension find it hard to catch up with assignments, and may drop out as a consequence. In one survey of high school dropouts, 43% said one of the top reasons they dropped out was because they missed too many days of school and could not catch up.<sup>6</sup> Each subsequent disciplinary action increases the likelihood of dropping out.<sup>7</sup> The effect is magnified for students who are also arrested or charged with a crime due to school based behavior. A first-time arrest doubles the odds that a student will drop out of high school, and a first-time court appearance quadruples the odds.<sup>8</sup>

---

<sup>4</sup> Emily Morgan, et.al., *The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and out of the Juvenile Justice System*, Council of State Gov'ts, 8 (2014), [https://csgjusticecenter.org/wp-content/uploads/2014/06/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf).

<sup>5</sup> U.S. Dep't of Justice & U.S. Dep't of Educ., *Dear Colleague Letter: Non-Discriminatory Administration of School Discipline*, 4-5 (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (collecting studies).

<sup>6</sup> John Bridgeland, et. al, *The Silent Epidemic: Perspectives of High School Dropouts*, The Bill & Melinda Gates Foundation, iii (Mar. 2006), <https://docs.gatesfoundation.org/documents/thesilentepidemic3-06final.pdf>.

<sup>7</sup> *The School Discipline Consensus Report*, *supra* note 4, at 8.

<sup>8</sup> Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473-477 (2006).

The negative impacts of suspension and expulsion extend over a lifetime and into the community. Students who do not complete high school are likely to earn less over their working careers: high school dropouts earn \$200,000 less than high school graduates.<sup>9</sup> Students who have been suspended or expelled are more likely to become involved in the juvenile and criminal justice systems. One study showed that suspended students were three times as likely to have contact with the juvenile justice system within a year.<sup>10</sup> Researchers have estimated that suspensions nationally result in tens of billions of dollars in social cost.<sup>11</sup>

**2. Children of color, children with disabilities, and low-income children are disproportionately impacted by the school to prison pipeline.**

The State's interpretation of RCW 13.40.070(3) would disproportionately impact children of color, children with disabilities and low-income children. These children are significantly more likely to be suspended than their peers and thus would be more likely to face increased

---

<sup>9</sup> Claudio Sanches & Linda Wertheimer, *School Dropout Rates Add to Fiscal Burden*, Nat'l Public Radio (July 24, 2011), <http://www.npr.org/2011/07/24/138653393/school-dropout-rates-adds-to-fiscal-burden>.

<sup>10</sup> *The School Discipline Consensus Report*, *supra* note 4, at 11.

<sup>11</sup> Russel W. Ramberger & Daniel J. Losen, *The High Cost of Harsh Discipline and its Disparate Impact*, Ctr. For Civil Rights Remedies, 20 (June 2016), available at [https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA\\_HighCost\\_6-2\\_948.pdf](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/the-high-cost-of-harsh-discipline-and-its-disparate-impact/UCLA_HighCost_6-2_948.pdf).



punishment if prosecutors could use suspension to circumvent the prohibition on stacked punishment in RCW 13.40.070(3).

Students of color, students with disabilities, and low-income students are suspended at rates up to triple that of their peers. In Washington, 7.95% of Black students were suspended or expelled in 2016, compared to 3.19% of White students.<sup>12</sup> American Indian students, Pacific Islander Students, multi-racial students, and Latinx students are similarly suspended at higher rates than average.<sup>13</sup> Low income students are nearly three times as likely to be suspended as students who are not low income.<sup>14</sup> And students who receive special education services are more than twice as likely to be suspended or expelled as students in general education.<sup>15</sup>

Children of color and children with disabilities are also disproportionately represented in Washington's juvenile justice system.

---

<sup>12</sup> Maria Flores & Kathleen Callahan, EOGOAC, *Closing the Opportunity Gap in Washington's Public Education System*, 15 (2017), <http://www.k12.wa.us/WorkGroups/EOGOAC/pubdocs/EOGOAC2017AnnualReport.pdf>

<sup>13</sup> *Id.* In 2016, the suspension and expulsion rates for these groups are: American Indian, 6.65%; Pacific Islander, 5.07%; multi-racial, 4.3%; Latinx, 4.19%.

<sup>14</sup> Office of Superintendent of Public Instruction, *Performance Indicators – Data and Analytics: Discipline*, <http://www.k12.wa.us/DataAdmin/PerformanceIndicators/DataAnalytics.aspx#discipline> (follow “Discipline Rates (School years 2012-13, 2013-14, 2014-15)” hyperlink located under the “Data Files” subheading to download Excel data file; then, in Excel file select the “Summary” tab). In 2015, 5.95% of low income students were suspended compared to 1.86% of non-low income students.

<sup>15</sup> *Id.* In 2015, 7.88% of students who receive special education services were suspended or expelled compared with 3.21% of students in general education.

Children of color are disproportionately represented at every level of the juvenile justice system in Washington. In 2013, non-white youth in Washington accounted for 40% of juvenile court referrals, 47% of juveniles in county detention facilities, and 55% of juveniles held in state detention facilities,<sup>16</sup> despite representing only 29% of Washington's adolescent population.<sup>17</sup> Children with disabilities are also disproportionately incarcerated. Nationwide, approximately one-third of children in juvenile detention qualified to receive special education services,<sup>18</sup> compared with only 13.5% of students in schools receiving special education services.<sup>19</sup> These disparities could increase if the State is allowed to seek stacked punishment based on a school's suspension for a single instance of misconduct.

---

<sup>16</sup> Wash. Dep't of Social and Health Servs., *Washington State Juvenile Justice Annual Report*, 29 (2014), <https://www.dshs.wa.gov/sites/default/files/JJRA/pcjj/documents/annual-report2014/Sect-5-Youth.of.Color.pdf>.

<sup>17</sup> Wash. Dep't of Health, *Adolescent Needs Assessment Report*, 2 (Jan. 2010), available at [http://www.doh.wa.gov/Portals/1/Documents/Pubs/910-907\\_CFHNeedsAssessDemoAccess.pdf](http://www.doh.wa.gov/Portals/1/Documents/Pubs/910-907_CFHNeedsAssessDemoAccess.pdf).

<sup>18</sup> U.S. Dep't of Educ., *Dear Colleague Letter on Educational Needs of Students with Disabilities in Correctional Facilities*, 1 (Dec. 5, 2014), available at <https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

<sup>19</sup> Office of Superintendent of Public Instruction, *Washington State Report Card 2016-16*, <http://reportcard.ospi.k12.wa.us/summary.aspx?groupLevel=District&schoolId=1&reportLevel=State&yrs=2015-16&year=2015-16>.

**3. Stacking punishment is ineffective and undermines the rehabilitative aims of the juvenile justice system.**

RCW 13.40.070(3) implicitly recognizes that children are different from adults and that imposing two forms of punishment for the same misconduct is counterproductive. The statute was adopted as part of the 1977 Juvenile Justice Act, which was a comprehensive system designed to “respond[] to the needs of youthful offenders” while ensuring that juveniles are “accountable for their offenses.” Laws of 1977, ch. 291, § 55(2). In developing and refining its juvenile justice system, Washington has “constructed a constitutional wall around juveniles,” ensuring that they are not subjected to “adult criminal proceedings and punishments.” *State v. S.J.C.*, 183 Wn.2d 408, 413, 352 P.3d 749 (2015). As counsel for A.B. recognized, imposing two criminal punishments upon A.B. for the same conduct thwarts the legislature’s intent to create a rehabilitative juvenile system because it mirrors the adult system..

Finally, subjecting A.B. to additional punitive measures is unlikely to modify his behavior. Incarceration and juvenile justice involvement weaken young people’s pro-social bonds and strengthen the likelihood of future criminality. Research shows that a significant proportion of young people naturally “age out” of delinquent behavior, and incarceration actually delays that pattern by disrupting young people’s natural

engagement with families, school, and work.<sup>20</sup> Grouping young people in detention strengthens affiliation with antisocial peers, antisocial behavior, and identification with deviancy.<sup>21</sup> Punitive measures can thus have the counterproductive impact of sending young people deeper into criminal behavior.

Evidence-based treatment is more likely to ensure that juveniles cease substance abuse. The Washington State Institute for Public Policy has identified a number of evidence and research-based programs designed to treat and prevent juvenile substance abuse, including mutli-systemic therapy and therapeutic communities.<sup>22</sup> Schools can also refer young people directly to chemical dependency treatment providers without referring the child for prosecution. RCW 70.96A.096. These interventions can effectively address juvenile substance abuse without the negative impacts of deeper court-involvement and juvenile incarceration.

---

<sup>20</sup> Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 3-4 (2011), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf) (discussing research).

<sup>21</sup> *Id.*

<sup>22</sup> Wash. State Institute for Public Policy, *Inventory of Evidence-Based, Research-Based and Promising Practices: for Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and Mental Health Systems* (June 2016), [http://www.wsipp.wa.gov/ReportFile/1639/Wsipp\\_Updated-Inventory-of-Evidence-Based-Researched-Based-and-Promising-Practices-For-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-the-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1639/Wsipp_Updated-Inventory-of-Evidence-Based-Researched-Based-and-Promising-Practices-For-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-the-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems_Report.pdf).

## V. CONCLUSION

The State has already elected to modify A.B.'s community supervision based on his possession of marijuana and is prohibited by RCW 13.40.070(3) from also seeking additional criminal sanctions based on the same conduct. The fact that A.B. was also suspended from school for that conduct does not enable the State to stack criminal punishments, as A.B.'s suspension cannot legally be separated from the conduct on which it was based. Under RCW 13.40.070(3), the charges in this case must be dismissed.

Respectfully submitted on March 2, 2017.

By: /s/ Vanessa Torres Hernandez

---

Vanessa Torres Hernandez, WSBA #42770  
Emily Chiang, WSBA #50517  
ACLU OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184  
vhernandez@aclu-wa.org  
echiang@aclu-wa.org

/s/ Sara Zier

---

Sara Zier, WSBA #43075  
Bonnie Linville, WSBA #49361  
TEAM CHILD  
1225 S. Weller Street, # 420  
Seattle, WA 98144  
(206) 322-2444  
sara.zier@teamchild.org  
bonnie.linville@teamchild.org

*Attorneys for Amici Curiae*

**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

No. 48948-1-II

**State of Washington v. A.B.**

**DECLARATION OF SERVICE**

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below, I caused to be served a copy of the Brief of *Amici Curiae* American Civil Liberties Union of Washington and Team Child via email and submission to the Division II JIS Link system to the following addresses with consent to electronic service:

**COUNSEL FOR APPELLANT**

Peter B. Tiller, WSBA #20835  
THE TILLER LAW FIRM  
P.O. Box 58  
Centralia, Washington 98531  
(360) 736-9301  
ptiller@tillerlaw.com

**COUNSEL FOR RESPONDENT**

Jesse Espinoza, WSBA #40240  
Deputy Prosecuting Attorney  
CLALLAM COUNTY PROSECUTING  
ATTORNEY  
223 E. 4th Street, Suite 11  
Port Angeles, Washington 98362  
(360) 417-2301  
jespinoza@co.claallam.wa.us

Signed this 2nd day of March, 2017, at Seattle, King County, WA.

By: /s/ Vanessa Torres Hernandez

---

Vanessa Torres Hernandez, WSBA #42770  
ACLU OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184  
vhernandez@aclu-wa.org

ACLU OF WASHINGTON

March 02, 2017 - 4:35 PM

Transmittal Letter

Document Uploaded: 3-489481-Amicus Brief.pdf

Case Name: State v. A.B.

Court of Appeals Case Number: 48948-1

Is this a Personal Restraint Petition? ☐ Yes ☒ No

The document being Filed is:

- ☐ Designation of Clerk's Papers ☐ Supplemental Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: \_\_\_\_\_
- ☐ Answer/Reply to Motion: \_\_\_\_\_
- ☒ Brief: Amicus
- ☐ Statement of Additional Authorities
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☐ Petition for Review (PRV)
- ☐ Other: \_\_\_\_\_

Comments:

Brief of Amici Curiae American Civil Liberties Union of Washington and Team Child.

Sender Name: Vanessa T Hernandez - Email: [vhernandez@aclu-wa.org](mailto:vhernandez@aclu-wa.org)

A copy of this document has been emailed to the following addresses:

ptiller@tillerlaw.com  
jespinoza@co.claallam.wa.us  
sara.zier@teamchild.org  
bonnie.linville@teamchild.org

